



**White Mountain Apache Tribe
EXECUTIVE OFFICE OF THE CHAIRMAN**

Ronnie Lupe, Tribal Chairman

May 12, 2006

Via E-mail to IEED@bia.edu

Attention: Section 1813 ROW Study
Office of Indian Energy and Economic Development
1849 C St., NW, Mail Stop 2749-MIB
Washington, D.C. 20240

Re: Section 1813 Study Process

To Whom It May Concern:

The White Mountain Apache Tribe provides the following comments on the Section 1813 Study process as well as the attached set of general principles supporting the rights-of-way protocol currently in place.

(1) Historic Rates of Compensation

The Tribe anticipates that an examination of historical rates of compensation for energy rights-of-way will reflect repeated instances of underpayment largely through transactions negotiated between the Federal government and third party energy interests. As such, historic patterns substantiate the need to maintain tribal authority to negotiate future rights-of-way grants.

(2) Appropriate Standards and Procedures

The Tribe supports the current procedures as they are defined in 25 CFR §169 et seq.

The Tribe supports the current valuation system as set out in 25 CFR §169.12 which requires a minimum "fair market value . . . plus severance damages" where they occur unless the landowners waive such minimum in writing. This process allows tribes to be energy market participants and energy business ventures like that launched by the Southern Ute Tribe have generated significant benefits for many consumers; imposition of an overarching valuation or other protocol will only impede this type of outcome.

*P.O. Box 1150, Whiteriver, Arizona 85941
telephone (928) 338-2500 - facsimile (928) 338-1514*

(3) Self-determination and Sovereignty Interests

Tribes must maintain the right of consent with respect to the uses of their lands. (*See 25 CFR §169.3*).

Arguments that tribal consent is a threat to national security are unfounded. On the contrary, the nation's utilization of natural resources from Indian lands has significantly bolstered the country's economic security and has created a service grid on which tribes also rely.

(4) National Energy Transportation Policies

Federal law and policy should foster partnerships between tribes and industry, encouraging alignments of economic interests related to energy development, transmission and distribution. Current policies relating to energy transportation across Indian lands accomplish this goal, as tribes across the country increasingly act as energy retailers, developers and regulators.

No policy changes are needed with respect to energy transportation on Indian lands.

Thank you for your attention.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ronnie Lupe', with a stylized, flowing script.

Ronnie Lupe
Tribal Chairman

PRINCIPLES SUPPORTED BY THE WHITE MOUNTAIN APACHE TRIBE IN RELATION TO THE SECTION 1813 RIGHT-OF-WAY STUDY

1. **Tribal Sovereignty and Consent.** The power of tribes to prevent third parties from using tribal lands without tribal consent is a critical element of tribal sovereignty that is well-established in existing Federal law and policy. The tribal consent requirement to the use of tribal lands must be honored and preserved.
2. **Conditions to Consent.** The tribal consent requirement also includes tribal authority to place conditions on the use of tribal lands, including conditions related to tribal jurisdiction, preservation of environmental and cultural resources, duration of use, and compensation.
3. **No Negative Effects.** Adherence to the tribal consent requirement has resulted in greater energy production in Indian country and lower energy costs to consumers. The tribal consent requirement for rights-of-way in no way threatens the energy interests of the nation's citizens.
4. **Preservation of Tribal Jurisdiction.** No right-of-way agreement or other business arrangement that permits third-party use of tribal land should reduce the sovereign power of a tribe over its lands or the activities conducted on its lands in the absence of the specific consent of the tribe.
5. **Restricted Duration of Rights-of-Way.** Federal law and policy should not be changed to require perpetual rights-of-way or automatic rights-of-way renewals because such changes would deprive tribes of management and control of their lands.
6. **Negotiated Compensation.** Tribes should continue to have the right to negotiate compensation for the use of tribal land that generates a fair share of the economic benefits produced by use of their lands. Such revenues sustain tribal governments and cultures.
7. **Industry Partnerships – Best Practices.** Federal law and policy should provide positive incentives to tribes and industry to foster partnerships and the mutual alignment of economic interests related to energy development, transmission and distribution.
8. **Appropriate Deference.** As reflected in the Indian Tribal Energy Development and Self Determination Act of 2005, deference to tribal decision-making should remain a fundamental component of Federal Indian energy policy.